IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.840 OF 2005

Sunil S. Kadekar).. Petitioner

Versus

The Principal Judge, City Civil & Sessios Court, Mumbai and others).. Respondents

Mrs.Usha Tiwari for the Petitioner.

Mr.R.M.Sawant, Government Pleader, with Mr.Mokashi, A.G.P., for the Respondents.

CORAM: H.L. GOKHALE AND S.P. KUKDAY, JJ.

DATED: 20TH JUNE 2005

P.C.:

. Heard Mrs.Tiwari in support of this Petition. Mr.Sawant, Government Pleader with Mr.Mokashi, A.G.P., appears for the Respondents.

2. The grievance of the Petitioner is that Rule 625 of the Civil Manual requires the candidates to be promoted to the post of Assistant Superintendent who have passed the lower standard examination as well as the higher standard qualifying examination. The Petitioner has undoubtedly passed these examinations. He states that candidates are being considered who have not passed these examinations. A reply has been filed by the Registrar (Legal) of the High Court. He has stated that

the promotions as per this Rule started to be made in the City Civil Court recently i.e. from 8th March 2001. These Rules were otherwise enforced in the Districts. When the Rule was sought to be enforced in the City Civil Court, representations were made by the Clerks submitting that they were never informed that they were required to pass these examinations. That is why the promotions were deferred.

3. In the meanwhile, a Division Bench of this Court has taken a view in **Writ Petition No.1112 of 2004** (*S.S.Keluskar and others* vs. *The State of Maharashtra and others*) that paragraph 625(3) of the Civil Manual cannot be departed from and the Committee of the Court has no jurisdiction in that behalf. Mr.Sawant has taken instructions from Mr.Narvekar, Registrar of the City Civil Court, who is present in Court, and has stated that the judgment is accepted and is being acted upon and only those who have passed both these examinations are being considered. He has brought to our notice the list of candidates who are now eligible and therein the name of the Petitioner appears at Sr.No.87. Thus, although earlier there were not many candidates above Petitioner, by now a good number of candidates have passed the examinations and they are senior to the Petitioner and since they are eligible, they are being considered. Inasmuch as the number of the Petitioner is quite low, as

of now there is no chance of his being included in the zone of consideration. Mr.Sawant further makes a statement that at any point of time hereafter, only those who have passed both examinations will be considered. He, however, points out that it may so happen that by the time the next selection procedure is done, some others might pass the examinations and if they are senior to the Petitioner, they will appear at higher positions in the seniority list.

4. The explanation given by the learned Government Pleader shows that there is no breach of the relevant Rule and the judgment is accepted and is being acted upon. This being the position, there is no reason to maintain the Petition. The same is accordingly dismissed.

5. We may further clarify that in paragraph 6 of the above referred judgment, the High Court has held that as far as those Clerks who have been confirmed prior to bringing into force of this Civil Manual are concerned, in their case the lower standard examination will not be required. They will of course pass the higher standard examination.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)